

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,683

IN THE MATTER OF:

Served August 8, 2007

SPECIAL PEOPLE TRANSPORTATION, LLC,)
Suspension and Investigation of)
Revocation of Certificate No. 953)

Case No. MP-2006-103

This matter is before the Commission on respondent's response to Order No. 10,347, served March 23, 2007.

I. BACKGROUND

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."¹ A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.²

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 953 for a minimum of \$1.5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum.

Certificate No. 953 was rendered invalid on June 26, 2006, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 9688, served June 26, 2006, noted the automatic suspension of Certificate No. 953 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 953, and gave respondent thirty days to replace the cancelled endorsement or face revocation of Certificate No. 953. Respondent submitted a \$1.5 million primary WMATC Insurance Endorsement on July 31, 2006. The effective date of the new endorsement is July 25, 2006. This means that respondent was without insurance coverage for twenty-nine days, from June 26, 2006, through July 24, 2006.

Under Commission Rule No. 28, respondent is required to verify that it ceased transporting passengers for hire under Certificate No. 953 as directed by Order No. 9688. Accordingly, Order No. 9849, served August 18, 2006, directed respondent to verify, within thirty days, that it ceased operations as of June 26, 2006. Inasmuch as respondent's general tariff covers service rendered to the general

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

public and to clients of the District of Columbia Department of Health, Medical Assistance Administration (DC Medicaid), respondent's verification was to be corroborated by evidence from respondent's general business records and by confirmation from DC Medicaid.

In response, respondent filed, among other things, some bank statements and the statement of its president, Ilo Mutombo. But the bank statements covering the key month of July were missing, and Mr. Mutombo's statement appeared to admit that respondent resumed operations for one of its clients in August.

Order No. 10,347 accordingly directed respondent to show cause why the Commission should not assess a civil forfeiture and/or revoke Certificate No. 953 for respondent's willful failure to comply with Commission Rule No. 28 and Commission Order No. 9849.

II. RESPONSE

In response to Order No. 10,347, respondent's president, Mr. Mutombo, has filed two additional statements, and respondent has produced the missing July bank statement - although not until April of this year.

Mr. Mutombo claims in one statement that respondent was "caught . . . off guard" by the cancellation of its insurance. But the policy, while cancelled effective June 26, 2006, was set to expire by its own terms on June 30, 2006, and Mr. Mutombo acknowledges receiving the suspension order on June 30.

In his other statement, Mr. Mutombo asserts that "all services were grounded on June 30 2006." But, the July bank statement suggests an alternate scenario. The July bank statement shows four purchases at motor vehicle service stations - a Sunoco station and two ExxonMobil stations - during the period of July 10, 2006, through July 26, 2006. The dollar amounts are consistent with gasoline purchases. They are not consistent with "all services . . . grounded."

Moreover, Mr. Mutombo equivocates on this issue later in his statement when he says that upon receiving a copy of the suspension order respondent contacted Logisticare Solutions, LLC, a former WMATC carrier and one of respondent's clients, to inform Logisticare that respondent had to cease operating because its insurance coverage had lapsed, which by itself bolsters the "all services . . . grounded" assertion, but then Mr. Mutombo explains: "In the meantime, we told [Logisticare] that [respondent] will cease to provide service to them if we continue to less work per day as we experienced during the last 5 months and high cost for [respondent] to sustain all the operations." (Emphasis added). While not a model of clarity, this last sentence echoes Mr. Mutombo's statement of September 1, 2006, that Logisticare had reduced its demand for services from respondent to "one job per day or two jobs per week" and that this made it "impossible for [respondent] to maintain . . . momentum." At the very least, it is evidence that respondent's resolve to cease operating was not absolute and unconditional.

Respondent also has submitted two statements from Logisticare.³ The first Logisticare statement submitted August 7, 2006, states that respondent provided no services on Logisticare's behalf "from June 25, 2006 - August 1, 2006." Order No. 10,347 noted that: "This indicates that respondent was not operating for a major client during the period when it lacked insurance, but does not exclude the possibility that respondent resumed operations for Logisticare in August, despite its continued suspended status." Instead of disavowing any resumption of service as posited in Order No. 10,347, the second Logisticare statement, dated April 11, 2007, merely states that respondent "will no longer" provide services on Logisticare's behalf.

What is clear, in any event, is that both respondent and Logisticare agree that respondent had been furnishing service on behalf of Logisticare for some period of time prior to the suspension of Certificate No. 953, but the Commission has no record of respondent ever filing a tariff for such service as is required by Article XI, Section 14, of the Compact and the terms of Certificate No. 953. The only rates respondent has on file with the Commission are DC Medicaid rates and shuttle rates for the general public, and respondent has yet to produce any statement from DC Medicaid, as directed by Order No. 9849, confirming that respondent timely ceased its DC Medicaid operations.

III. ASSESSMENT OF FORFEITURE AND REVOCATION OF AUTHORITY

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.⁴

The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.⁵

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁶ "Willfully" does not mean with evil purpose or criminal intent; rather, it describes

³ The statements are offered as confirmation of respondent ceasing service to Virginia Medicaid passengers, but they do not confirm respondent ceased service to DC Medicaid passengers.

⁴ Compact, tit. II, art. XIII, § 6(f).

⁵ Compact, tit. II, art. XI, § 10(c).

⁶ *In re Community Alliances, Inc.*, No. MP-03-89, Order No. 8186 (July 23, 2004); *In re Imperial Travel & Limo. Servs., Inc.*, No. MP-03-48, Order No. 7748 (Feb. 17, 2004); *In re Chika Transport Serv., Inc.*, No. MP-02-124, Order No. 7173 (May 7, 2003); *In re Shirley L. Nelson, t/a L&N Transp.*, No. MP-96-16, Order No. 4834 (May 9, 1996).

conduct marked by careless disregard.⁷ Employee negligence is no defense.⁸

Respondent has offered no explanation for failing to timely produce the July bank statement, and no explanation for failing to produce any confirmation from DC Medicaid at all, as directed by Order No. 9849. Accordingly, we will assess a forfeiture of \$250 for knowingly and willfully violating Order No. 9849.⁹

We will also assess a forfeiture of \$250 for knowingly and willfully violating Article XI, Section 14, of the Compact and the terms of Certificate No. 953 by providing service to Logisticare without rates for such service on file with the Commission.¹⁰

On the issue of revocation, we note that Certificate No. 953 has been suspended since June 26, 2006. According to Commission Regulation No. 65: "Any Certificate of Authority that remains suspended for 365 consecutive days, for any reason, shall be deemed terminated and revoked effective on the 366th day."

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$250 for knowingly and willfully violating Order No. 9849 by failing to produce all responsive documents and failing to timely produce all bank statements.

2. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$250 for knowingly and willfully violating Article XI, Section 14, of the Compact and the terms of Certificate No. 953 by providing service to Logisticare Solutions, LLC, without rates for such service on file with the Commission.

3. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of five hundred dollars (\$500).

4. That pursuant to Commission Regulation No. 65, Certificate of Authority No. 953 stands revoked.

⁷ Order No. 8186; Order No. 7748; Order No. 7173; Order No. 4834.

⁸ Order No. 8186; Order No. 7748; Order No. 7173; Order No. 4834.

⁹ See *In re John Carmen Cadet, t/a Reliable Transp.*, No. MP-04-128, Order No. 8560 (Feb. 16, 2005) (assessing \$250 forfeiture for failing to submit Rule 28 verification); Order No. 8186 (assessing \$250 forfeiture for failing to produce documents); Order No. 7748 (same).

¹⁰ See Order No. 7173 (assessing \$250 forfeiture for violating tariff requirements); Order No. 4834 (same).

5. That within 30 days from the date of this order respondent shall:

- a. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 953 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:

A handwritten signature in black ink, appearing to read 'W. S. Morrow, Jr.', with a stylized, cursive script.

William S. Morrow, Jr.
Executive Director